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OPEN MEETING ITEM



COMMISSIONERS
MARC SPITZER - Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON



0000117247

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996
TELEPHONE: (602) 542-4242
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MEMORANDUM

NEW

TO: Marc Spitzer, Chairman
Jim Irvin
William A. Mundell
Jeff Hatch-Miller
Mike Gleason
Arizona Corporation Commission

FROM: Mark Sendrow
Director of Securities

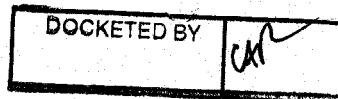
DATE: February 5, 2003

RE: Proposed Settlement Agreement and Order re: One Vision Children's Foundation, Inc., and Hollister M. Marx, S-03515A-03-0000

CC: Brian C. McNeil, Executive Secretary

DOCKETED

FEB 07 2003

AZ CORP COMMISSION
DOCUMENT CONTROL

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RECEIVED

Attached is a proposed Settlement Agreement and Order between the Arizona Corporation Commission, One Vision Children's Foundation, Inc. ("One Vision") and Hollister M. Marx. The underlying case is currently pending in Maricopa County Superior Court. Also attached as exhibits to the Settlement Agreement are a Stipulation for Entry of Judgment in the Superior Court lawsuit and the judgment to be entered in that case. This settlement does not involve the remaining defendants in the case, Wealth Management Resources, Inc. ("WMR"), Michael and Betty Maksudian and Michael and Lucinda Diaz.

The Commission authorized filing this lawsuit in Superior Court in order that a receiver could be appointed for the entities. On October 28, 2002, the Commission filed the action. The Commission's Verified Complaint stated that One Vision was a Phoenix based charity operated by Hollister Marx. One Vision had financial resources of less than \$100 when it encountered WMR. WMR was run by Michael Maksudian and Michael "Bo" Diaz. In February 2001, it entered into a contract with One Vision to market charitable gift annuities ("CGAs"). The contract granted WMR fees of \$750/hour, with a maximum of 30% to the CGA amount.

From August 2001 through July 2002, WMR and One Vision sold 18 CGAs to 15 people for a total of \$4,357,140.57. Total commissions received by WMR were \$1,317,473.09, or 30% of the money raised. Commissions on individual CGAs ranged from 19% to 52%. Under the

deal with WMR, One Vision was allowed to take 5% of the CGA funds for its own use. Thus, it received approximately \$220,000 for its use.

Investors (and their agents) were told that the money would remain in a segregated account. Many believed that it would remain at Merrill Lynch or would be invested by Merrill Lynch. Donors were told that the remainder on their death would be used by One Vision for charitable purposes, either as the donor directed or if not chosen by the donor, as One Vision chose. No investor, nor agent, was told how much WMR received in commissions.

WMR recruited all agents for the sale of the CGAs. All sales agents, plus Maksudian and Diaz, are insurance agents. WMR calculated all numbers for the CGAs, including how much should remain in the segregated account. WMR prepared all paperwork for the CGAs. WMR ran illustrations on the CGAs, providing them to its agents. Most of the CGAs violated the various state laws on CGAs.

All CGA funds were pooled into an account at Merrill Lynch. Beginning in December 2001, Maksudian and Diaz solicited One Vision to invest the funds in alternative investments. \$1,300,000 was placed in partnerships run by Merchant Capital, a Tennessee company which allegedly purchased first generation premium debt. On November 4, 2002, after the Commission filed its case, the Securities and Exchange Commission sued Merchant Capital and its principals for violating the Federal Securities laws.

Also at the recommendation of Maksudian and Diaz, One Vision invested \$1,030,000 in Yucatan Resorts, allegedly a resort time share business. Several states have orders against Yucatan for violations of their securities laws.

On filing of the Complaint and other pleadings, the Superior Court entered a Temporary Restraining Order and appointed Receivers for One Vision and WMR. Although One Vision and Marx then stipulated to entry of a Preliminary Injunction, the remaining Defendants did not. The Court then heard testimony and arguments on the Commission's request for a Preliminary Injunction. The Court found that the Commission had proven that the CGAs sold by Defendants were securities, that the Commission had proven numerous violations of A.R.S. § 44-1991, and granted the Preliminary Injunction on December 18, 2002.

Under the terms of the attached Settlement Agreement, One Vision and Marx agree to cease and desist their activity. One Vision agrees to a restitution judgment of \$4,357,140.84, with a penalty of \$50,000. Marx agrees to a restitution judgment of \$3,039,667.75, with a penalty of \$10,000, to be reduced to \$5,000 if all investors in One Vision receive full restitution within two years of entry of judgment against Marx. Additionally, One Vision and Marx agree not to challenge the imposition of the Receivership and also agree to fully cooperate with the Commission and the Receiver in the case and any efforts to recovery funds from other parties. The Commission Order also authorizes the Securities Division to enter into the Stipulation for Entry of Judgment in the Superior Court case.

The Securities Division recommends approval of the Settlement Agreement.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 **COMMISSIONERS**

4 MARC SPITZER, Chairman
5 JIM IRVIN
6 WILLIAM A. MUNDELL
7 JEFF HATCH-MILLER
8 MIKE GLEASON

9 In the matter of _____)

10 ONE VISION CHILDREN'S FOUNDATION)
11 P.O. Box 27297)
12 Tempe, Arizona 85285)

13 HOLLISTER M. MARX)
14 1228 El Parque Dr.)
15 Tempe, Arizona 85282)

16 _____
17 Respondents.)

DOCKET NO. S-03515-03-0000

DECISION NO. _____

**SETTLEMENT AGREEMENT AND
ORDER RE SAME**

18 **I. SETTLEMENT AGREEMENT.**

19 1. Plaintiff, the Arizona Corporation Commission ("ACC"), and Defendants One
20 Vision Children's Foundation, Inc. ("One Vision") and Hollister M. Marx ("Marx"), parties in the
21 case of *Arizona Corporation Commission v. One Vision Children's Foundation, Inc., Hollister M.*
22 *Marx, Wealth Management Resources, Inc., Michael B. and Betty Maksudian and Michael A. and*
23 *Lorrina Diaz*, Maricopa County Superior Court No. CV2002-020878 (the "lawsuit"), desire to
24 resolve the portion of the lawsuit involving them and thus enter into this Settlement Agreement
25 ("Agreement").

26 2. In settlement of the lawsuit, One Vision and Marx elect to permanently waive their
right to a trial of the lawsuit. One Vision and Marx admit the jurisdiction of the Superior Court
over the subject matter of this lawsuit. One Vision and Marx neither admit nor deny any factual or
legal allegation contained in the Complaint and, solely for the purposes of this case, consent to the
entry of the Proposed Judgment attached as Exhibit B to this Agreement.

1 3. The ACC and Marx agree that this Agreement and the Judgment are based on the
2 legal conclusion that Marx violated A.R.S. § 44-1991(2) by directly or indirectly making untrue
3 statements of material fact or omitting to state material facts which were necessary in order to make
4 the statements made not misleading in light of the circumstances under which they were made.

5 4. One Vision and Marx, pursuant to A.R.S. § 44-2032, agree that they, their agents,
6 employees, successors and assigns, shall permanently be enjoined from violating the Securities
7 Act.

8 5. One Vision agrees to entry of judgment against it of \$4,357,140.84 in restitution.
9 One Vision is entitled to offsets for any payment of restitution to investors from any source as
10 reflected on the records of the ACC.

11 6. Pursuant to A.R.S. § 44-2037, One Vision agrees to pay a penalty of \$50,000.

12 7. Marx agrees to entry of judgment against her of \$3,039,667.75 in restitution. Marx
13 is entitled to offsets for any recovery of funds from One Vision's investments in Yucatan Resorts,
14 Inc, One Vision's investments in the Evergreen R.L.L.P.s, or One Vision's accounts at Merrill
15 Lynch Pierce Fenner & Smith.

16 8. Pursuant to A.R.S. § 44-2037, Marx agrees to pay a penalty of \$10,000. If all
17 investors in One Vision receive full restitution within two years of the date of the entry of
18 judgment against Marx, her penalty shall be reduced to \$5,000.

19 9. One Vision and Marx acknowledge that they have been fully advised of their right
20 to a trial to present evidence and call witnesses and One Vision and Marx knowingly and
21 voluntarily waive any and all rights to a trial of this matter.

22 10. One Vision and Marx knowingly and voluntarily waive any right they may have
23 under to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from
24 the entry of Exhibit B, the proposed judgment.

25 11. One Vision and Marx acknowledge and agree that this Agreement is entered into
26 freely and voluntarily and that no promise was made or coercion used to induce such entry.

1 12. One Vision and Marx acknowledge that they have been represented by counsel in
2 this matter, they have reviewed this Agreement with their attorney and understand all terms it
3 contains.

4 13. By consenting to the entry of the Judgment, One Vision and Marx agree to refrain
5 from taking any action or to making, or permitting to be made, any public statement denying,
6 directly or indirectly, or calculated to create the impression that the legal conclusions contained in
7 Paragraph 3 of the Agreement are without merit.

8 14. While this Order settles the lawsuit between One Vision and Marx and the ACC,
9 One Vision and Marx understand that this Order does not preclude the ACC from instituting other
10 administrative or civil proceedings based on violations that are not addressed by the lawsuit.

11 15. One Vision and Marx understand that this Agreement does not preclude the ACC
12 from referring this matter to any governmental agency for administrative, civil, or criminal
13 proceedings that may be related to the matters addressed by the lawsuit.

14 16. One Vision and Marx understand that this Agreement does not preclude any other
15 agency or officer of the state of Arizona or its subdivisions from instituting administrative, civil or
16 criminal proceedings that may be related to matters addressed by this Agreement or the lawsuit.

17 17. Marx agrees that she will not exercise any control over any entity that offers or sells
18 securities or provides investment advisory services, within or from Arizona.

19 18. One Vision and Marx understand that default shall render them liable to the
20 Commission for its costs of collection and interest at the legal rate determined by law.

21 19. Marx agrees that she will continue to cooperate with the Securities Division and the
22 Receiver including, but not limited to, providing truthful, complete and accurate testimony at any
23 hearing or trial in this matter and cooperating with the state of Arizona in any related investigation
24 or any other matters arising from the activities described in the lawsuit.

25 20. One Vision and Marx agree that the Receivership of One Vision shall be made
26 permanent to wind up the affairs of One Vision, until the Court determines that the Receivership

shall end. One Vision and Marx agree not to challenge the imposition or continuation of the Receivership. Reasonable inquiries into the amount and nature of fees requested by the Receiver and/or his counsel shall not be deemed a challenge to the imposition or continuation of the Receivership.

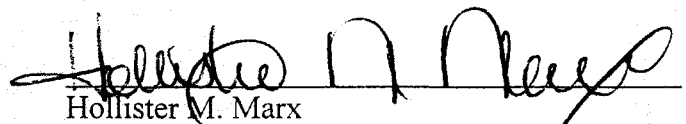
21. Each party shall bear its own attorneys' fees and costs.

22. One Vision and Marx acknowledge that this Agreement must be approved by the ACC at a noticed Open Meeting.

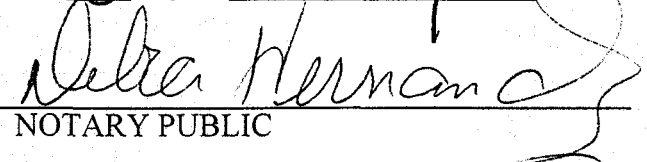
23. The ACC, One Vision and Marx agree that upon approval of this Agreement, their counsel shall as soon as practicable execute and cause to be filed the attached Stipulation to Entry of Judgment (Exhibit A to this Agreement) and Judgment (Exhibit B to this Agreement).

24. One Vision and Marx expressly and severally represent and warrant that they are authorized to execute this Agreement. The validity, effect and performance of this Agreement shall be governed by the laws of the State of Arizona.

25. This Agreement resolves the lawsuit brought by the ACC against One Vision and Marx. It does not resolve the portion of the lawsuit pertaining to Defendants Wealth Management Resources, Inc., Michael B. and Betty Maksudian and Michael A. and Lorrina Diaz.


Hollister M. Marx

SUBSCRIBED AND SWORN TO BEFORE me this 3 day of February, 2003.


NOTARY PUBLIC

My Commission Expires:

October 15, 2004



Debra Hernandez
My Commission CC974937
Expires October 15, 2004

ONE VISION CHILDREN'S
FOUNDATION, INC.

Hollister M. Marx

By: Hollister M. Marx
Its Executive Director

SUBSCRIBED AND SWORN TO BEFORE me this 3 day of February, 2003.

Debra Hernandez
NOTARY PUBLIC

My Commission Expires:

October 15, 2004



Debra Hernandez
My Commission CC974937
Expires October 15, 2004

II.

ORDER

The Arizona Corporation Commission ("Commission") having reviewed the Settlement Agreement entered into between ONE VISION CHILDREN'S FOUNDATION, INC. and HOLLISTER M. MARX (collectively "RESPONDENTS") and the Securities Division of the Commission ("Division") and finding the Settlement Agreement to be in the public interest, the Commission finds that the following Order is appropriate and in the public interest:

IT IS ORDERED that the Settlement Agreement between the Commission and RESPONDENTS is approved.

1 IT IS FURTHER ORDERED that the Securities Division is authorized to enter into the
2 Stipulation to Entry of Judgment attached as Exhibit A to this Order.

3 IT IS FURTHER ORDERED that this Order shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

5
6
7 CHAIRMAN

COMMISSIONER

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
12 Executive Secretary of the Arizona Corporation
13 Commission, have hereunto set my hand and caused the
14 official seal of the Commission to be affixed at the
Capitol, in the City of Phoenix, this _____ day of
_____, 2003.

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17 _____
BRIAN C. McNEIL
Executive Secretary

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19 _____
20 DISSENT

21 _____
22 DISSENT

23
24 This document is available in alternative formats by contacting Shelly M. Hood, Executive
25 Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail
shood@cc.state.az.us.

26 (md)

Exhibit A

1 **ARIZONA CORPORATION COMMISSION**

2 Mark Dinell #011450
3 1300 West Washington, 3rd Floor
4 Phoenix, Arizona 85007
5 Attorney for Plaintiff
6 Telephone: (602) 542-0626
7 Fax: (602) 594-7407

8 **STATE OF ARIZONA**

9 **MARICOPA COUNTY SUPERIOR COURT**

10 ARIZONA CORPORATION COMMISSION)

11 Plaintiff)

12 v.)

13 ONE VISION CHILDREN'S FOUNDATION,)
14 INC., an Arizona Non-profit corporation;)
15 HOLLISTER M. MARX, an individual;)
16 WEALTH MANAGEMENT RESOURCES,)
17 INC., an Arizona corporation; MICHAEL B. and)
18 BETTY MAKSDIAN, husband and wife;)
19 MICHAEL A. and LORRINA DIAZ, husband)
20 and wife,)

21 Defendants.)

No. CV2002-020878

SIPULATION FOR ENTRY
OF JUDGMENT

(Assigned to Judge Kenneth L. Fields)

22 Plaintiff the Arizona Corporation Commission and Defendants One Vision Children's
23 Foundation, Inc. and Hollister M. Marx hereby stipulate to entry of the attached Judgment.

24 Dated this ____ day of February, 2003


25 ARIZONA CORPORATION COMMISSION

26 By _____
Mark Dinell
Attorney for the Arizona Corporation
Commission

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Dated this ____ day of February, 2003

QUARLES & BRADY STREICH LANG

By 

Lee M. Holtry
Attorneys for Defendants
One Vision Children's Foundation, Inc.
and Hollister M. Marx

Exhibit B

1 **ARIZONA CORPORATION COMMISSION**

Mark Dinell #011450

2 1300 West Washington, 3rd Floor

Phoenix, Arizona 85007

3 Attorney for Plaintiff

Telephone: (602) 542-0626

4 Fax: (602) 594-7407

6 **STATE OF ARIZONA**

7 **MARICOPA COUNTY SUPERIOR COURT**

8 ARIZONA CORPORATION COMMISSION)

No. CV2002-020878

9 Plaintiff)

JUDGMENT

10 v.)

(Assigned to Judge Kenneth L. Fields)

11 ONE VISION CHILDREN'S FOUNDATION,)
12 INC., an Arizona Non-profit corporation;)
13 HOLLISTER M. MARX, an individual;)
14 WEALTH MANAGEMENT RESOURCES,)
15 INC., an Arizona corporation; MICHAEL B. and)
16 BETTY MAKUSDIAN, husband and wife;)
MICHAEL A. and LORRINA DIAZ, husband)
and wife,)

Defendants.)

17 Upon stipulation of Plaintiff the Arizona Corporation Commission ("ACC") and
18 Defendants One Vision Children's Foundation, Inc. ("One Vision") and Hollister M. Marx
19 ("Marx") and good cause appearing:

20 IT IS HEREBY ORDERED pursuant to A.R.S. § 44-2032, that One Vision and Marx shall be
21 permanently enjoined from violations of the Arizona Securities Act, A.R.S. § 44-1801 *et seq.*

22 IT IS FURTHER ORDERED that judgment shall be entered in favor of the ACC and
23 against One Vision in the amount of \$4,357,140.84. One Vision is entitled to offsets for any
24 recovery of funds in this action by its Receiver, Lawrence Warfield, or the ACC.
25
26

1 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-2037, a civil penalty shall be
2 imposed against One Vision in the amount of \$50,000.

3 IT IS FURTHER ORDERED that judgment shall be entered in favor of the ACC and
4 against Marx in the amount of \$3,039,667.75. Marx is entitled to offsets for any recovery of funds
5 from One Vision's investments in Yucatan Resorts, Inc, One Vision's investments in the Evergreen
6 R.L.L.P.s, or One Vision's accounts at Merrill Lynch Pierce Fenner & Smith.

7 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-2037, a civil penalty shall be
8 imposed against Marx in the amount of \$10,000. If all investors in One Vision receive full
9 restitution within two years of the date of the entry of judgment against Marx, her penalty shall be
10 reduced to \$5,000.

11 IT IS FURTHER ORDERED that the Receivership of One Vision shall be made permanent
12 to wind up the affairs of One Vision, until the Court determines that the Receivership shall end.

13 IT IS FURTHER ORDERED that the ACC, One Vision and Marx shall bear their own
14 attorneys' fees and costs.

15 IT IS FURTHER ORDERED that interest shall accrue on all damages at the legal rate of
16 ten percent per annum from date of entry of this Judgment until fully paid.

17 IT IS FURTHER ORDERED that there is no just reason for delay and this judgment shall
18 be entered immediately.
19
20

21 Dated this ____ day of _____, 2003.
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25 Hon. Kenneth A. Fields
26 Maricopa County Superior Court